BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

PAMELA M. LUNA	)	
Claimant	)	
	)	
VS.	)	
	)	
ASHFORD PLACE	)	
Respondent	)	Docket Nos. **1,037,757**
	)	**& 1,039,636**
AND	)	
	)	
DIAMOND INSURANCE CO.	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier request review of the December 2, 2008 preliminary hearing Order entered by Administrative Law Judge Steven J. Howard.

ISSUES

It is undisputed that claimant suffered a work-related injury to her cervical spine on January 18, 2007, which required surgical fusion at C6-7. This claim is Docket No. 1,037,757. During treatment for this injury claimant also had left arm, hand and finger complaints. Claimant was released at maximum medical improvement and returned to work for respondent in an accommodated job. Claimant continued to experience left arm and hand tingling and weakness which was diagnosed as carpal tunnel syndrome. Claimant alleged, in Docket No. 1,039,636, that she suffered work-related repetitive trauma that caused the left carpal tunnel syndrome.

Respondent argued that after treatment for the cervical injury the claimant's left arm complaints had resolved and that her accommodated work was not so repetitive as to cause carpal tunnel syndrome. Consequently, respondent denied the claimant's left carpal tunnel syndrome arose out of and in the course of her employment.

After the preliminary hearing, the Administrative Law Judge (ALJ) entered an Order directing the "parties to agree upon a specialist, other than Dr. Moore, to treat claimant's left forearm."

Respondent requests review of whether claimant's accidental injury arose out of and in the course of employment. Respondent argues that because claimant had been

released at maximum medical improvement for the cervical injury the claimant has failed to prove her left carpal tunnel syndrome was caused by that accidental injury. Respondent further argues that claimant has failed to meet her burden of proof that her continued work caused her left carpal tunnel syndrome. Accordingly, respondent requests the Board to reverse the ALJ's Order.

Claimant argues the ALJ's Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Pamela Luna began working as a certified nurses assistant (CNA) for respondent in December 2006. On January 18, 2007, claimant suffered a neck injury when a patient fell on her. When claimant was released to work she was placed in an accommodated position. Her new position as the activities director included typing, making decorations, pushing wheel chairs, filing, faxing, wiping and cleaning tables, shuffling cards for residents, setting up and taking down tables and chairs and serving snacks to residents.

Claimant noted that after her cervical injury she noticed the numbness, tingling and pain in her left arm and hand. Claimant further noted that the symptoms never stopped. As she performed the accommodated work as activities director she continued to experience problems with her left hand and had difficulties with weakness in her left hand.

At claimant's attorney's request, claimant was examined and evaluated by Dr. Edward Prostic in February 2008. The doctor diagnosed claimant as having left carpal tunnel syndrome.

On June 4, 2008, the ALJ ordered an independent medical examination by Dr. John Moore to determine whether or not claimant's left hand and wrist complaints are a direct and natural consequence of the original injury which occurred on January 18, 2007. Dr. Moore performed a physical examination and opined that claimant did not have any of the classic symptoms regarding carpal tunnel syndrome. The doctor further opined that claimant had multifocal neurological symptoms that are most likely due to her cervical spine injury. Dr. Moore recommended an EMG to determine if claimant had any residual radicular loss from her neck injury.

In a letter dated August 15, 2008, to Judge Avery[1], Dr. Moore opined:

[1] There is no explanation in the evidentiary record why the letter was addressed to Judge Avery instead of Judge Howard.

> Within a reasonable degree of medical certainty I do not believe that Ms. Luna's traumatic injury of 01/18/07, or her work duties at Ashford Place, are causes of her left carpal tunnel syndrome. Her job duties as a CNA and activity director would not be in the class of work duties considered causative of a repetitive motion injury.[2]

In a letter dated August 26, 2008, to claimant's attorney, Dr. Prostic opined:

> The injury reported to have occurred January 18, 2007 is not the soul [sic] cause of carpal tunnel syndrome. C7 radiculopathy for which she has been operated is certainly a contributing cause of double crush syndrome which could easily be aggravated by typing, filing, setting up and taking down tables and chairs, and other activities described in the work description that you have furnished. For this reason, I believe that her carpal tunnel syndrome should be covered under the Kansas Laws.[3]

A claimant in a workers compensation proceeding has the burden of proof to establish by a preponderance of the credible evidence the right to an award of compensation and to prove the various conditions on which her right depends.[4] A claimant must establish that her personal injury was caused by an "accident arising out of and in the course of employment."[5] The phrase "arising out of" employment requires some causal connection between the injury and the employment.[6] The existence, nature and extent of the disability of an injured workman is a question of fact.[7] A workers compensation claimant's testimony alone is sufficient evidence of the claimant's physical condition.[8]

It is well settled in this state that an accidental injury is compensable even where the accident only serves to aggravate or accelerate an existing disease or intensifies the

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[2] P.H. Trans., Cl. Ex. 1 at 2.

[3] *Id.* at 4.

[4] K.S.A. 2007 Supp. 44-501(a); *Perez v. IBP, Inc.*, 16 Kan. App. 2d 277, 826 P.2d 520 (1991).

[5] K.S.A. 2007 Supp. 44-501(a).

[6] *Pinkston v. Rice Motor Co.*, 180 Kan. 295, 303 P.2d 197 (1956).

[7] *Armstrong v. City of Wichita*, 21 Kan. App. 2d 750, 907 P.2d 923 (1995).

[8] *Hanson v. Logan U.S.D. 326*, 28 Kan. App. 2d 92, 11 P.3d 1184 (2000), *rev. denied* 270 Kan. 898 (2001).

affliction.[9] The test is not whether the job-related activity or injury caused the condition but whether the job-related activity or injury aggravated or accelerated the condition.[10]

The claimant testified that she first noticed her left arm and hand complaints after the cervical injury. She testified that the complaints continued as she performed the accommodated work as an activities director. Dr. Prostic opined that the left arm condition could have easily been aggravated by claimant's work as an activities director. In this case, Dr. Prostic's opinion is more persuasive. This Board Member finds claimant has met her burden of proof to establish that she suffered accidental injury to her left arm as a result of her continued work as an activities director.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.[11] Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2007 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.[12]

WHEREFORE, it is the finding of this Board Member that the Order of Administrative Law Judge Steven J. Howard dated December 2, 2008, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of January 2009.

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HONORABLE DAVID A. SHUFELT
BOARD MEMBER

c: Michael R. Lawless, Attorney for Claimant
James P. Wolf, Attorney for Respondent and its Insurance Carrier
Steven J. Howard, Administrative Law Judge

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[9] *Harris v. Cessna Aircraft Co.*, 9 Kan. App. 2d 334, 678 P.2d 178 (1984)*; Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978); *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 547 P.2d 751 (1976).

[10] *Hanson v. Logan U.S.D. 326*, 28 Kan. App.2d 92, 11 P.3d 1184, *rev. denied* 270 Kan. 898 (2001); *Woodward v. Beech Aircraft Corp.*, 24 Kan. App.2d 510, 949 P.2d 1149 (1997).

[11] K.S.A. 44-534a.

[12] K.S.A. 2007 Supp. 44-555c(k).